



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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Albany, New York 12237

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October 14, 2003

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DOH GC Opinion No. 03-06  
Physician Practices With Third-Party Payors

Dear Dr. Lambert:

This is in response to your letter to me of May 22, 2003, requesting an opinion letter regarding questions involving physician practices with third-party payors. Your questions and the Department's responses follow. For purposes of this opinion letter, you asked me to assume that the physician does not have a provider agreement with any managed care plans and that the physician does not submit electronic claims.

## Question 1

May a physician receiving a request from a third-party payor for a copy of a patient medical record or other health information require the third-party payor to provide a written authorization from the patient prior to providing the copy of the medical record or other health information?

## Answer to Question 1

The following is professional misconduct for a physician: "Revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient, except as authorized or required by law" (Education Law § 6530(23)). Thus, it would be professional misconduct to disclose patient medical records to a third-party payor without the consent of the patient, except as authorized or required by law. Where a patient is an enrollee in a health maintenance organization, State law also provides: "A non-participating provider shall provide an enrollee's organization with such patient information as is reasonably required by the organization to administer its plan" (Public Health Law § 4410(2)). The disclosure, however, "shall be limited to that information necessary in light of the reason for disclosure" (Public Health Law § 18(6)).

Thus, if the patient has consented to the disclosure, then a physician receiving a request from a health maintenance organization is required to provide a copy of the medical record or other health information necessary for the health maintenance organization to administer its plan. Even where the health maintenance organization is not paying for the services of the physician, the disclosure of patient health information may be necessary for the health maintenance organization to manage the health care of the patient. If the physician does not know whether the patient has consented to allow the physician to disclose the information to the health maintenance organization, then the physician may require the health maintenance organization to provide a written authorization from the patient prior to providing the copy of the medical record or other health information.

Where the third-party payor is not a health maintenance organization, but is simply providing health insurance, the physician would be complying with the patient's request, if such a request has been made, to seek payment from the patient's insurer. The following is professional misconduct for a physician: "Failing to complete forms or reports required for the reimbursement of a patient by a third party" (Education Law § 6530(43)). Thus, if the patient has requested the physician to disclose patient information to the health insurer as necessary for the health insurer to pay the physician for the health services rendered to the patient, then the physician must provide such patient information to the health insurer. If the physician and patient had no such understanding, then the physician could require the health insurer to provide a written authorization from the patient prior to providing a copy of the medical record or other health information.

#### Question 2

If a physician can require a third-party payor to provide a written authorization from the patient prior to providing a copy of the medical record or other health information, may the physician require the third-party payor to provide a current and specific consent as to the documents/information to be released (which puts the patient on notice as to the request) or is the physician required to provide the third-party payor with the documents/information requested if the third-party payor provides the physician with a previously obtained general authorization from the patient?

#### Answer to Question 2

As indicated in answer to the first question, a physician may not disclose patient health information without the prior consent of the patient. In most instances, a previously obtained general authorization is sufficient to prevent the disclosure from being professional misconduct under Education Law § 6530(23). For confidential HIV related information, a previously obtained general authorization is sufficient where the disclosure is necessary to reimburse the physician for health services (Public Health

Law § 2782(1)(i)); but where the physician is not seeking reimbursement from the insurer, the authorization must comply with the specific requirements of Public Health Law § 2782(1)(j).

Thus, a physician would generally be required to provide a third-party payor with the information requested if the third-party payor provides the physician with a previously obtained general authorization from the patient. In the case of the disclosure of confidential HIV related information to a third-party payor from which the physician was not seeking reimbursement, the authorization would have to comply with Public Health Law § 2782(1)(j).

### Question 3

If the third-party payor requires an explanation as to why any of the services were provided or claims submitted, may the physician charge for the time related to the preparation of a response to such an inquiry?

### Answer to Question 3

As indicated in answer to the first question, it is professional misconduct to fail to complete forms or reports required for the reimbursement of a patient by a third party. "Reasonable fees may be charged for such forms or reports, but prior payment for the professional services to which such forms or reports relate may not be required as a condition for making such forms or reports available" (Education Law § 6530(43)). Thus, a physician may charge for the time related to the preparation of a response to such an inquiry, without committing professional misconduct. However, there is no State law that requires third-party payors to pay physicians for the time related to the preparation of a response to an inquiry from the third-party payor as to why services were provided or claims were submitted.

### Question 4

Does the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) have an impact on the applicable New York State law?

### Answer to Question 4

An analysis of the impact of HIPAA and its implementing privacy regulations on State law can be found on the Department of Health's website at <http://www.health.state.ny.us/nysdoh/hipaa/hipaa.htm>. HIPAA does not have an impact on the specific New York State statutory provisions cited in this opinion. HIPAA does not require consent to disclose protected health information for purposes of treatment, payment or health care operations (45 CFR § 164.506). Generally, if the physician

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were a HIPAA-covered entity, the physician would need a HIPAA-compliant authorization to disclose protected health information for other purposes (45 CFR § 164.508).

Very truly yours,

Donald P. Berens, Jr.  
General Counsel